

EXHIBIT A

From: unknown Page: 2/6 Date: 11/3/2006 2:50:34 PM

SUM-100

**SUMMONS
(CITACION JUDICIAL)**FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

JOHNSON & JOHNSON, a New Jersey corporation; MCNEIL CONSUMER & SPECIALTY PHARMACEUTICALS, a Division of MCNEIL-PPC, INC., a New Jersey corporation; MCKESSON CORPORATION, a Delaware corporation; WAL-MART STORES, INC., a Delaware corporation; and DOES 1 through 100, inclusive.

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

THOMAS B. GAINES, a deceased minor child by and through his personal representative(s) and/or successor(s) in interest;

[See Attachment for Additional Parties]

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

CASE NUMBER
(Número del Caso):

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
400 McAllister Street

San Francisco, CA 94102

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

MICHAEL J. AVENATTI, ESQ

310 576 1200

310 576 1220

GREENE BROILLET & WHEELER LLP

100 Wilshire Blvd., 21st Floor

Santa Monica, CA 90401

Deborah Steppe

DATE:

(Fecha) NOV - 3 2006

Gordon Park-Li

Clark, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

(SEAL)

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.80 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

1 **GREENE BROILLET & WHEELER, LLP**
 2 **LAWYERS**

3 100 WILSHIRE BOULEVARD, SUITE 2100
 4 P.O. BOX 2131
 5 SANTA MONICA, CALIFORNIA 90407-2131
 6 TEL. (310) 576-1200
 7 FAX. (310) 576-1220

8 **BROWNE GREENE, State Bar No. 38441**

9 **MICHAEL J. AVENATTI, State Bar No. 206929**

10 Attorneys for Plaintiffs

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 12 **FOR THE COUNTY OF SAN FRANCISCO**

13 **THOMAS B. GAINES, a deceased minor**
 14 **child by and through his personal**
 15 **representative(s) and/or successor(s) in**
 16 **interest; DIANA L. GAINES, individually, as**
 17 **Executor of the Estate of Thomas B. Gaines,**
 18 **and as Thomas B. Gaines' personal**
 19 **representative and successor in interest;**
 20 **GARY D. GAINES, individually and as**
 21 **Thomas B. Gaines' personal representative**
 22 **and successor in interest; and THE ESTATE**
 23 **OF THOMAS B. GAINES,**

24 **Plaintiffs,**

25 **vs.**

26 **JOHNSON & JOHNSON, a New Jersey**
 27 **corporation; MCNEIL CONSUMER &**
 28 **SPECIALTY PHARMACEUTICALS, a**
Division of MCNEIL-PPC, INC., a New
Jersey corporation; MCKESSON
CORPORATION, a Delaware corporation;
WAL-MART STORES, INC., a Delaware
corporation; and DOCS 1 through 100,
inclusive,

Defendants.

**ENDORSED
 FILED
 SAN FRANCISCO COUNTY
 SUPERIOR COURT**

2006 NOV -3 AM 10:17
 (SPACE BELOW FOR FILING STAMP ONLY)

GORDON PARK - LI. CLERK

BY: Deborah Steppe

DEPUTY CLERK

CASE MANAGEMENT CONFERENCE SET

APR 06 2007 - 9 AM

DEPARTMENT 212

CASE NO. CGC-06-457600

COMPLAINT FOR DAMAGES

1. **Strict Product Liability/Personal Injury**
2. **Negligence/Personal Injury**
3. **Breach of Express and Implied Warranties/Personal Injury**
4. **Wrongful Death**

DEMAND FOR JURY TRIAL

(Joint Declaration of Diana L. Gaines and Gary D. Gaines filed concurrently herewith)

1 COME NOW Plaintiffs THOMAS B. GAINES, a deceased minor child by and through his
2 personal representative(s) and/or successor(s) in interest; DIANA L. GAINES, individually, as
3 Executor of the Estate of Thomas B. Gaines, and as Thomas B. Gaines' personal representative and
4 successor in interest; GARY D. GAINES, individually and as Thomas B. Gaines' personal
5 representative and successor in interest; and THE ESTATE OF THOMAS B. GAINES, and for causes
6 of action against Defendants JOHNSON & JOHNSON; MCNEIL CONSUMER & SPECIALTY
7 PHARMACEUTICALS, a Division of MCNEIL-PPC, INC.; MCKESSON CORPORATION; WAL-
8 MART STORES, INC.; and DOES 1 through 100, inclusive, and each of them, complain and allege
9 as follows:

10
11 **GENERAL ALLEGATIONS**
12

13 1. At all times mentioned herein, Plaintiffs THOMAS B. GAINES, DIANA L. GAINES,
14 and GARY D. GAINES were residents of Lincoln County, North Carolina.
15

16 2. At all times mentioned herein, Plaintiffs DIANA L. GAINES and GARY D. GAINES
17 were the parents of THOMAS B. GAINES and, by operation of law, are presently the heirs of Plaintiff
18 THOMAS B. GAINES. Additionally, Plaintiff DIANA L. GAINES is the Executor of the ESTATE
19 OF THOMAS B. GAINES and Thomas B. Gaines' personal representative and successor in interest.
20 Further, Plaintiff GARY D. GAINES is Thomas B. Gaines' personal representative and successor in
21 interest.
22

23 3. The true names and/or capacities, whether individual, corporate, associate or
24 otherwise of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs at this time, who
25 therefore sue said Defendants by such fictitious names. Plaintiffs are informed and believe and
26 thereupon allege that each of the Defendants fictitiously named herein as a DOE is legally responsible,
27 negligently or in some other actionable manner, for the events and happenings hereinafter referred to,
28 and thereby proximately caused the injuries and damages to Plaintiffs as hereinafter alleged. The

1 Plaintiffs will ask leave of court to amend this Complaint to insert the true names and/or capacities
2 of such fictitiously named Defendants when the same have been ascertained.
3

4 4. Plaintiffs are informed and believe, and thereupon allege, that at all times mentioned
5 herein, Defendants, including DOES 1 through 100, inclusive and each of them, were the agents,
6 servants, employees and/or joint venturers of their co-defendants, and each was, as such, acting within
7 the course, scope and authority of said agency, employment and/or venture, and with the authorization
8 and/or ratification of said co-defendants, and that each and every Defendant, as aforesaid, when acting
9 as a principal, was negligent in the selection and hiring of each and every other Defendant as an agent,
10 employee and/or joint venturer.
11

12 5. Plaintiffs are informed and believe, and thereupon allege, that Defendant JOHNSON
13 & JOHNSON (NYSE: JNJ) is, and at all times herein relevant was, a New Jersey corporation with its
14 principal place of business in New Brunswick, New Jersey. Plaintiffs are further informed and
15 believe, and thereupon allege, that Defendant JOHNSON & JOHNSON ("J&J") is authorized to do,
16 has regularly done, and is doing, business within the County of San Francisco, California and Lincoln
17 County, North Carolina.
18

19 6. Plaintiffs are informed and believe, and thereupon allege, that Defendant MCNEIL
20 CONSUMER & SPECIALTY PHARMACEUTICALS, a Division of MCNEIL-PPC, INC., is, and
21 at all times herein relevant was, a New Jersey corporation with its principal place of business in Fort
22 Washington, Pennsylvania, and a wholly owned subsidiary of J&J. Plaintiffs are further informed
23 and believe, and thereupon allege, that Defendant MCNEIL CONSUMER & SPECIALTY
24 PHARMACEUTICALS, a Division of MCNEIL-PPC, INC., ("MCNEIL") is authorized to do, has
25 regularly done, and is doing, business within the County of San Francisco, California and Lincoln
26 County, North Carolina.
27
28

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1 7. Plaintiffs are informed and believe, and thereupon allege, that Defendant
2 MCKESSON CORPORATION (NYSE: MCK) is, and at all times herein relevant was, a Delaware
3 corporation with its principal place of business in San Francisco, California. Plaintiffs are further
4 informed and believe, and thereupon allege, that Defendant MCKESSON CORPORATION
5 ("MCKESSON") is authorized to do, has regularly done, and is doing, business within the County of
6 San Francisco, California and Lincoln County, North Carolina.

7
8 8. Plaintiffs are informed and believe, and thereupon allege, that Defendant WAL-
9 MART STORES, INC. is, and at all times herein relevant was, a Delaware corporation with its
10 principal place of business in Bentonville, Arkansas. Plaintiffs are further informed and believe, and
11 thereupon allege, that Defendant WAL-MART STORES, INC. ("WAL-MART") is authorized to do,
12 has regularly done, and is doing, business within the County of San Francisco, California and Lincoln
13 County, North Carolina.

14
15 9. At all times herein relevant, Defendants MCNEIL and J&J were in the business of
16 designing, manufacturing, marketing, distributing and selling an over-the-counter ("OTC")
17 nonsteroidal anti-inflammatory analgesic drug called Children's Motrin, generic name ibuprofen,
18 ("Children's Motrin") to consumers and users in California, North Carolina and throughout the United
19 States through various distributors, including but not limited to MCKESSON, and various retailers,
20 including but not limited to WAL-MART.

21
22 10. At all times herein relevant, Defendant MCNEIL was primarily responsible for
23 manufacturing and distributing Children's Motrin under the direction and control of J&J.

24
25 11. On or about September 28, 2004, Plaintiff THOMAS B. GAINES, then a three-year-
26 old male child with no known drug allergies, was stung by a bee. He was subsequently given
27 Children's Motrin drops (labeled "Ibuprofen Oral Suspension - Fever Reducer/Pain Reliever") in
28 accordance with the materials and instructions included with the drug.

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COMPLAINT and DEMAND FOR JURY TRIAL

1 Executor of the Estate of Thomas B. Gaines, and as Thomas B. Gaines' personal representative and
2 successor in interest; GARY D. GAINES, individually and as Thomas B. Gaines' personal
3 representative and successor in interest; and THE ESTATE OF THOMAS B. GAINES, and for a First
4 Cause of Action against Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1
5 through 100, inclusive, and each of them, complain and allege as follows:

6
7 16. Plaintiffs re-allege as though fully set forth at length, and incorporate herein by
8 reference, all of the allegations and statements contained in paragraphs 1 through 15, inclusive, of the
9 General Allegations above.

10
11 17. At all times mentioned herein, Defendants J&J; MCNEIL; MCKESSON; WAL-
12 MART; and DOES 1 through 100, inclusive, and each of them, by and through their officers, directors,
13 employees and/or managing agents, were the manufacturers, fabricators, designers, assemblers, testers,
14 distributors, sellers, inspectors, marketers, warranters, and/or advertisers of the CHILDREN'S
15 MOTRIN, which contained design and/or manufacturing defects, and which was capable of causing,
16 and in fact, did cause personal injuries to the users and consumers thereof, while being used in a
17 manner reasonably foreseeable, thereby rendering same unsafe and dangerous for use by the consumer
18 and user. Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100,
19 inclusive, by and through their officers, directors, employees and/or managing agents, also failed to
20 provide adequate warnings or instructions to the medical community, consumers and users of the
21 CHILDREN'S MOTRIN concerning the risk of Stevens-Johnson Syndrome, Toxic Epidermal
22 Necrolysis and other serious adverse reactions associated with the use of the CHILDREN'S MOTRIN
23 even though Defendants: 1) knew and had known about the connection between the drug and these
24 severe, potentially fatal reactions since the late 1980's; 2) knew and had known the medical literature
25 for years had shown a connection between Stevens-Johnson Syndrome/Toxic Epidermal Necrolysis
26 and the drug; 3) knew from their own clinical trials of Children's Motrin that the drug caused cases
27 of Stevens-Johnson Syndrome/Toxic Epidermal Necrolysis; and 4) had warned about Stevens-Johnson
28

1 Syndrome/Toxic Epidermal Necrolysis in their drug package insert for the prescription form of the
2 drug before Children's Motrin began being distributed OTC.

3
4 18. Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100,
5 inclusive, by and through their officers, directors, employees and/or managing agents, designed,
6 manufactured, marketed, distributed and sold Children's Motrin, including the CHILDREN'S
7 MOTRIN, to their retailers and customers, even as Defendants' officers, directors, employees and/or
8 managing agents, and each of them, knew or had reason to know that the CHILDREN'S MOTRIN had
9 inherent design flaws. Specifically, Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and
10 DOES 1 through 100, inclusive, by and through their officers, directors, employees and/or managing
11 agents, knew the ordinary and expected uses of the CHILDREN'S MOTRIN could and would cause
12 Stevens-Johnson Syndrome and Toxic Epidermal Necrolysis.

13
14 19. Prior to September 2004, the officers, directors, employees and/or managing agents
15 of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive,
16 were aware of the high frequency of Stevens-Johnson Syndrome and Toxic Epidermal Necrolysis and
17 the risk of injury or death to consumers and users of Children's Motrin. The officers, directors,
18 employees and/or managing agents of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and
19 DOES 1 through 100, inclusive were put on notice of the high risk to consumers and users of
20 Children's Motrin after the completion of a major clinical trial known as the Boston Fever Study,
21 which was the basis of the FDA approval of the OTC sale of the drug. Specifically, Defendants J&J;
22 MCNEIL and DOES 1 through 100, inclusive, by and through their officers, directors, employees
23 and/or managing agents, knew that there were cases of Stevens-Johnson Syndrome and Toxic
24 Epidermal Necrolysis in the clinical trials but did not report them and misrepresented the true
25 incidence of serious mucocutaneous reactions associated with the drug during the Boston Fever Study.

26
27 20. Prior to September 2004, the officers, directors, employees and/or managing agents
28 of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive,

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1 were aware of the high frequency of Stevens-Johnson Syndrome and Toxic Epidermal Necrolysis and
2 the risk of injury or death to consumers and users of Children's Motrin. The officers, directors,
3 employees and/or managing agents of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and
4 DOES 1 through 100, inclusive were put on notice of the high risk to consumers and users of the
5 Children's Motrin by the numerous claims and lawsuits filed by consumers and users of Children's
6 Motrin who were severely injured or killed as a result of ingesting the drug. Defendants J&J and
7 MCNEIL and their officers, directors, employees and/or managing agents knew the reasons why the
8 Children's Motrin continued to cause Stevens-Johnson Syndrome and Toxic Epidermal Necrolysis
9 and yet chose to take no corrective action because Defendants J&J and MCNEIL determined that such
10 action would decrease the companies' profitability and be too costly when compared to litigating the
11 resulting claims and lawsuits by consumers and users of Children's Motrin, including the
12 CHILDREN'S MOTRIN.

13
14 21. Prior to September 2004, the officers, directors, employees and/or managing agents
15 of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive,
16 knew or should have known that Children's Motrin, including the CHILDREN'S MOTRIN, was
17 substandard and would cause consumers and users who used the Children's Motrin in a foreseeable
18 manner death and serious injury. Moreover, the officers, directors, employees and/or managing agents
19 of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive,
20 knew or should have known that the CHILDREN'S MOTRIN was defective and extremely dangerous
21 with the likely result of serious bodily injury and/or death to the drug's users and consumers. The
22 officers, directors, employees and/or managing agents of Defendants J&J; MCNEIL; MCKESSON;
23 WAL-MART; and DOES 1 through 100, inclusive, knew prior to this incident, and even prior to the
24 manufacture of the CHILDREN'S MOTRIN, of the availability of safer, affordable alternative designs
25 for the CHILDREN'S MOTRIN, which would have reduced or eliminated the risk of severe injuries
26 and/or death to its consumers and users.

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22. Despite this knowledge, Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive, by and through their officers, directors, employees and/or managing agents, failed to recall the CHILDREN'S MOTRIN, issue safety bulletins to the public, or even advise or warn purchasers by providing warnings of the severe risk of injury or death from use of the drug present at the time of its original manufacture and sale. Although the officers, directors, employees and/or managing agents of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive, were aware of the need to recall the CHILDREN'S MOTRIN, issue public safety bulletins, and/or provide adequate warnings, Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive, through the decisions of their officers, directors, employees and/or managing agents, acted in conscious disregard of the rights and safety of consumers and users by failing to utilize available safer alternative designs, warn of the hazards, and/or recall the Children's Motrin, including the CHILDREN'S MOTRIN, prior to the subject incident. In fact, Plaintiffs believe and thereupon allege that the officers, directors, employees and/or managing agents of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive, in an effort to mislead the public and thereby increase corporate profits at the expense of human safety, summarily disregarded any information regarding the high risk of injury and death inherent in Children's Motrin, including the CHILDREN'S MOTRIN, which was unfavorable to their companies and might lead consumers and users to refrain from purchasing or using Children's Motrin.

23. At all times mentioned herein, the officers, directors, and/or managing agents of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive, authorized and/or ratified the conduct of their employees who knew of the growing number of serious injuries and deaths to consumers and users resulting from Children's Motrin and the need for additional warnings. Further, at all times mentioned herein, the officers, directors, and/or managing agents of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive, authorized and/or ratified the conduct of their employees who knowingly failed to provide warnings and/or recall Defendants J&J and MCNEIL'S defective drug, in spite of their knowledge of

1 the grave danger and the availability of technically and economically feasible alternatives to prevent
2 death or serious bodily injury to consumers and users.

3
4 24. As a result of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES
5 1 through 100's conscious disregard of consumer safety, by and through the actions and inactions of
6 their officers, directors, employees and/or managing agents, Plaintiffs were unaware of the hazardous
7 and defective condition of the CHILDREN'S MOTRIN. Had Plaintiffs been advised of problems
8 with Children's Motrin, Plaintiff THOMAS B. GAINES would have never ingested the drug and thus
9 avoided the severe injuries and death which resulted.

10
11 25. Plaintiffs are informed and believe, and thereupon allege, that at all times herein
12 relevant, the CHILDREN'S MOTRIN which Plaintiff THOMAS B. GAINES ingested was defective
13 when placed on the market by Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES
14 1 through 100, inclusive, and each of them, and was of such a nature that the defects would not be
15 discovered in the normal course of inspection and use by consumers and users thereof.

16
17 26. Plaintiffs are informed and believe, and thereupon allege, that at all times herein
18 relevant, the CHILDREN'S MOTRIN which Plaintiff THOMAS B. GAINES ingested was defective
19 in design, testing, development, manufacture, fabrication, assembly, distribution, warnings,
20 instructions, inspection, and/or marketing and the damages, injuries and death sustained by Plaintiff
21 THOMAS B. GAINES were caused by the defects in the CHILDREN'S MOTRIN.

22
23 27. In late September 2004, Plaintiff THOMAS B. GAINES ingested the CHILDREN'S
24 MOTRIN in a reasonably foreseeable manner. As a direct and proximate result of the defective
25 condition of the CHILDREN'S MOTRIN, as well as the conduct of Defendants J&J; MCNEIL;
26 MCKESSON; WAL-MART; and DOES 1 through 100, inclusive, and the officers, directors,
27 employees and/or managing agents of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and
28 DOES 1 through 100, inclusive, and each of them, Plaintiff THOMAS B. GAINES was injured and

1 hurt in his health, strength, and activity, sustaining injuries to his body, and shock and injuries to his
 2 nervous system and person, all of which said injuries caused Plaintiff THOMAS B. GAINES great
 3 physical, mental, and nervous pain and suffering, all to his general damage, in an amount in excess
 4 of the jurisdictional limits of this Court.

5
 6 28. As a direct and proximate result of the defective condition of the CHILDREN'S
 7 MOTRIN, the conduct of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1
 8 through 100, inclusive, and the conduct of the officers, directors, employees and/or managing agents
 9 of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive, and
 10 each of them, Plaintiff THOMAS B. GAINES was compelled to and did employ the services of
 11 hospitals, physicians, surgeons, nurses and the like, to care for and treat him, and did incur hospital,
 12 medical, professional and incidental expenses, the exact amount of said expenses will be stated
 13 according to proof.

14
 15 29. The above-described conduct of Defendants J&J; MCNEIL; and DOES 1 through
 16 100, inclusive, by and through their officers, directors, employees and/or managing agents, was carried
 17 out with a conscious disregard of Plaintiffs' rights and of the safety of consumers and, therefore,
 18 Plaintiffs are entitled to an award of punitive damages in an amount sufficient to punish Defendants
 19 J&J; MCNEIL; and DOES 1 through 100, inclusive, in light of their financial condition, and to make
 20 an example of them.

21 22 SECOND CAUSE OF ACTION

23 (Negligence/Personal Injury)

24 COME NOW Plaintiffs THOMAS B. GAINES, a deceased minor child by and through his
 25 personal representative(s) and/or successor(s) in interest; DIANA L. GAINES, individually, as
 26 Executor of the Estate of Thomas B. Gaines, and as Thomas B. Gaines' personal representative and
 27 successor in interest; GARY D. GAINES, individually and as Thomas B. Gaines' personal
 28 representative and successor in interest; and THE ESTATE OF THOMAS B. GAINES, and for a

1 Second Cause of Action against Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES
2 1 through 100, inclusive, and each of them, complain and allege as follows:
3

4 30. Plaintiffs re-allege as though fully set forth at length, and incorporate herein by
5 reference, all of the allegations and statements contained in paragraphs 1 through 15, inclusive, of the
6 General Allegations and paragraphs 16 through 29, inclusive, of the First Cause of Action above.
7

8 31. At all times mentioned herein, Defendants J&J; MCNEIL; MCKESSON; WAL-
9 MART; and DOES 1 through 100, inclusive, and each of them, were engaged in the business of and
10 had a duty to manufacture, fabricate, design, assemble, sell, distribute, test, inspect, market, warrant,
11 warn, instruct, and/or advertise the CHILDREN'S MOTRIN, in a reasonable manner, and which
12 Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive, and
13 each of them, knew, or in the exercise of reasonable care should have known, would be used without
14 inspection for defects in its manufacture or design.
15

16 32. At all times mentioned herein, Defendants J&J; MCNEIL; MCKESSON; WAL-
17 MART; and DOES 1 through 100, inclusive, and each of them, by and through their officers, directors,
18 employees and/or managing agents, negligently, recklessly, and/or carelessly manufactured, fabricated,
19 designed, assembled, distributed, tested, sold, inspected, marketed, warranted, warned, instructed,
20 and/or advertised the CHILDREN'S MOTRIN, in that the same was capable of causing and in fact
21 did cause personal injuries to the consumer and/or user thereof while being used in a manner
22 reasonably foreseeable, thereby rendering the same unsafe and dangerous for use by the consumer
23 and/or user. Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100,
24 inclusive, and each of them, also failed to recall the CHILDREN'S MOTRIN, or warn consumers of
25 the risk of serious injury or death from continued use of the CHILDREN'S MOTRIN after having
26 notice of an alarming number of injuries and deaths from ingesting Children's Motrin.
27
28

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35. The above-described conduct of Defendants J&J; MCNEIL; and DOES 1 through 100, inclusive, by and through their officers, directors, employees and/or managing agents, was carried out in conscious disregard of Plaintiffs' rights and of the safety of consumers and, therefore, Plaintiffs are entitled to an award of punitive damages in an amount sufficient to punish Defendants J&J; MCNEIL; and DOES 1 through 100, inclusive, in light of their financial condition, and to make an example of them.

(Breach of Warranty/Personal Injury)

COME NOW Plaintiffs THOMAS B. GAINES, a deceased minor child by and through his personal representative(s) and/or successor(s) in interest; DIANA L. GAINES, individually, as Executor of the Estate of Thomas B. Gaines, and as Thomas B. Gaines' personal representative and successor in interest; GARY D. GAINES, individually and as Thomas B. Gaines' personal representative and successor in interest; and THE ESTATE OF THOMAS B. GAINES, and for a

1 Third Cause of Action against Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES
2 1 through 100, inclusive, and each of them, complain and allege as follows:

3
4 36. Plaintiffs re-allege as though fully set forth at length, and incorporate herein by
5 reference, all of the allegations and statements contained in paragraphs 1 through 15, inclusive, of the
6 General Allegations, paragraphs 16 through 29, inclusive, of the First Cause of Action, and paragraphs
7 30 through 35, inclusive, of the Second Cause of Action above.

8
9 37. Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100,
10 inclusive, and each of them, by and through their officers, directors and managing agents, impliedly
11 and expressly warranted to Plaintiffs and each consumer and/or user that the CHILDREN'S MOTRIN
12 was fit for the purpose for which it was to be used and was free from design and manufacturing defects
13 to consumers and users thereof.

14
15 38. As stated in detail above and re-alleged herein, the CHILDREN'S MOTRIN was not
16 free from such defects, nor fit for the purpose for which it was to be used, and was in fact, defectively
17 manufactured and designed and imminently dangerous to consumers and users, including Plaintiff
18 THOMAS B. GAINES, and was capable of causing, and in fact did cause, injuries to the users and
19 consumers thereof, while being used in a manner reasonably foreseeable, thereby rendering same
20 unsafe and dangerous for use by consumers and/or users.

21
22 39. As a direct and proximate result of the above-described breaches of warranties by
23 Defendants, including J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100,
24 inclusive, and each of them, and by and through the officers, directors, employees and/or managing
25 agents of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100,
26 inclusive, and each of them, and the defective condition of the CHILDREN'S MOTRIN, Plaintiff
27 THOMAS B. GAINES was injured and hurt in his health, strength, and activity, sustaining injuries
28 to his body, and shock and injury to his nervous system and person, all of which said injuries caused

1 Plaintiff THOMAS B. GAINES great physical, mental, and nervous pain and suffering, all to his
2 general damage, in an amount in excess of the jurisdictional limits of this Court.

3
4 40. As a direct and proximate result of the above-described breaches of warranties by
5 Defendants, including J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100,
6 inclusive, and each of them, and by and through the officers, directors, employees and/or managing
7 agents of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100,
8 inclusive, and each of them, and the defective condition of the CHILDREN'S MOTRIN, Plaintiff
9 THOMAS B. GAINES was compelled to and did employ the services of hospitals, physicians,
10 surgeons, nurses and the like, to care for and treat him, and did incur hospital, medical, professional
11 and incidental expenses, the exact amount of said expenses will be stated according to proof.

12
13 41. As aforementioned in this Complaint, and re-alleged herein, the above-described
14 breaches and conduct of Defendants J&J; MCNEIL; and DOES 1 through 100, inclusive, by and
15 through their officers, directors, employees and/or managing agents, were carried out in conscious
16 disregard of Plaintiffs' rights and of the safety of consumers and, therefore, Plaintiffs are entitled to
17 an award of punitive damages in an amount sufficient to punish Defendants J&J; MCNEIL; and DOES
18 1 through 100, inclusive, in light of their financial condition, and to make an example of them.

20 FOURTH CAUSE OF ACTION

21 (Wrongful Death)

22 COME NOW Plaintiffs DIANA L. GAINES, individually, as Executor of the Estate of
23 Thomas B. Gaines, and as Thomas B. Gaines' personal representative and successor in interest; and
24 GARY D. GAINES, individually and as Thomas B. Gaines' personal representative and successor in
25 interest, and for a Fourth Cause of Action against Defendants J&J; MCNEIL; MCKESSON; WAL-
26 MART; and DOES 1 through 100, inclusive, and each of them, complain and allege as follows:
27
28

1 42. Plaintiffs re-allege as though fully set forth at length, and incorporate herein by
2 reference, all of the allegations and statements contained in paragraphs 1 through 15, inclusive, of the
3 General Allegations, paragraphs 16 through 29, inclusive, of the First Cause of Action, paragraphs 30
4 through 35, inclusive, of the Second Cause of Action, and paragraphs 36 through 41, inclusive, of the
5 Third Cause of Action above.

6
7 43. At all times mentioned herein, Defendants J&J; MCNEIL; MCKESSON; WAL-
8 MART; and DOES 1 through 100, inclusive, and each of them, were engaged in the business of and
9 had a duty to manufacture, fabricate, design, assemble, sell, distribute, test, inspect, market, warrant,
10 warn, instruct, and/or advertise the CHILDREN'S MOTRIN, in a reasonable manner, and which
11 Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive, and
12 each of them, knew, or in the exercise of reasonable care should have known, would be used without
13 inspection for defects in its manufacture or design.

14
15 44. At all times mentioned herein, Defendants J&J; MCNEIL; MCKESSON; WAL-
16 MART; and DOES 1 through 100, inclusive, and each of them, by and through their officers, directors,
17 employees and/or managing agents, negligently, recklessly, and/or carelessly manufactured, fabricated,
18 designed, assembled, distributed, tested, sold, inspected, marketed, warranted, warned, instructed,
19 and/or advertised the CHILDREN'S MOTRIN, in that the same was capable of causing and in fact
20 did cause personal injuries to the consumer and/or user thereof while being used in a manner
21 reasonably foreseeable, thereby rendering the same unsafe and dangerous for use by the consumer
22 and/or user. Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100,
23 inclusive, and each of them, also failed to recall the CHILDREN'S MOTRIN, or warn consumers of
24 the risk of serious injury or death from continued use of the CHILDREN'S MOTRIN after having
25 notice of an alarming number of injuries and deaths from ingesting Children's Motrin.

26
27 45. As a direct and proximate result of the above-described conduct of the Defendants,
28 including J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive, and each

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1 of them, and the defects in the CHILDREN'S MOTRIN, Plaintiff THOMAS B. GAINES suffered
2 extreme pain and suffering and an excruciating death, in an amount in excess of the jurisdictional
3 limits of this Court.

4
5 46. As a direct and proximate result of the above-described conduct of the Defendants,
6 including J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive, and each
7 of them; the defects in the CHILDREN'S MOTRIN; and the resulting death of their son THOMAS
8 B. GAINES, Plaintiffs DIANA L. GAINES and THOMAS B. GAINES suffered severe damages,
9 including but not limited to financial support and the loss of Thomas' love, companionship, comfort,
10 and affection, all in an amount in excess of the jurisdictional limits of this Court.

11
12 47. The above-described conduct of Defendants J&J; MCNEIL; and DOES 1 through
13 100, inclusive, by and through their officers, directors, employees and/or managing agents, was carried
14 out in conscious disregard of Plaintiffs' rights and of the safety of consumers and, therefore, Plaintiffs
15 are entitled to an award of punitive damages in an amount sufficient to punish Defendants J&J;
16 MCNEIL; and DOES 1 through 100, inclusive, in light of their financial condition, and to make an
17 example of them.

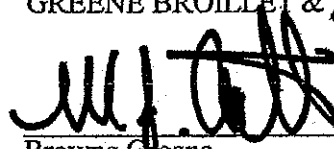
18
19 WHEREFORE, on the First, Second, Third, and Fourth Causes of Action, Plaintiffs pray
20 judgment as follows:

- 21 1. For general damages for personal injury in excess of Ten Million Dollars
22 (\$10,000,000.00) according to proof;
- 23 2. For economic damages for medical, hospital and related expenses which amount will
24 be stated according to proof;
- 25 3. For economic and noneconomic damages resulting from the death of Thomas B.
26 Gaines, including but not limited to damages for the pain and suffering Thomas B.
27 Gaines endured prior to his death, in excess of Ten Million Dollars (\$10,000,000.00)
28 according to proof;

4. As to Defendants JOHNSON & JOHNSON and MCNEIL CONSUMER & SPECIALTY PHARMACEUTICALS, a Division of MCNEIL-PPC, INC., for an award of exemplary damages, in an amount properly calculated to punish said Defendants for their despicable conduct and conscious disregard for the safety of others, and to deter any such despicable conduct and conscious disregard for the safety of others in the future;
5. For costs of suit incurred herein;
6. For prejudgment interest according to proof; and
7. For such other and further relief as the Court may deem just and proper.

DATED: November 2, 2006

GREENE BROILLET & WHEELER, LLP



Browne Greene
Michael J. Avenatti
Attorneys for Plaintiffs


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DEMAND FOR TRIAL BY JURY

Plaintiffs THOMAS B. GAINES, a deceased minor child by and through his personal representative(s) and/or successor(s) in interest; DIANA L. GAINES, individually, as Executor of the Estate of Thomas B. Gaines, and as Thomas B. Gaines' personal representative and successor in interest; GARY D. GAINES, individually and as Thomas B. Gaines' personal representative and successor in interest; and THE ESTATE OF THOMAS B. GAINES hereby demand trial of all causes by jury.

DATED: November 2, 2006

GREENE BROILLET & WHEELER, LLP


Browne Greene
Michael J. Avenatti
Attorneys for Plaintiffs

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From: unknown Page: 3/6 Date: 11/3/2006 2:50:34 PM

CASE NUMBER: CGC-06-457600 THOMAS B GAINES et al VS. JOHNSON & JOHNSON, A N

NOTICE TO PLAINTIFF

A Case Management Conference is set for

DATE: APR-06-2007

TIME: 9:00AM

**PLACE: Department 212
400 McAllister Street
San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.

CRC 212 (g)(1) requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference.

However, it would facilitate the issuance of a case management order without an appearance at the case management conference if the case management statement is filed, served and lodged in Department 212 twenty-five (25) days before the case management

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state.

ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS

IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A MANDATORY SETTLEMENT CONFERENCE OR TRIAL. (SEE LOCAL RULE 4)

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

Superior Court Alternative Dispute Resolution Coordinator
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3876

See Local Rules 3.6, 6.0 C and 10 D re stipulation to commissioners acting as temporary Judges

From: unknown Page: 6/6 Date: 11/3/2006 2:50:35 PM

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2 **LAWYERS**
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5 **SANTA MONICA, CALIFORNIA 90407-2101**
6 **TEL. (310) 578-1200**
7 **FAX. (310) 578-1220**

8 **BROWNE GREENE, State Bar No. 38441**

9 **MICHAEL J. AVENATIL, State Bar No. 206929**

10 Attorneys for Plaintiffs

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN FRANCISCO**

13 **THOMAS B. GAINES, a deceased minor**
14 **child by and through his personal**
15 **representative(s) and/or successor(s) in**
16 **interest; DIANA L. GAINES, individually, as**
17 **Executor of the Estate of Thomas B. Gaines,**
18 **and as Thomas B. Gaines' personal**
19 **representative and successor in interest;**
20 **GARY D. GAINES, individually and as**
21 **Thomas B. Gaines' personal representative**
22 **and successor in interest; and THE ESTATE**
23 **OF THOMAS B. GAINES,**

24 **Plaintiffs,**

25 **vs.**

26 **JOHNSON & JOHNSON, a New Jersey**
27 **corporation; MCNEIL CONSUMER &**
28 **SPECIALTY PHARMACEUTICALS, a**
Division of MCNEIL-PPC, INC., a New
Jersey corporation; MCKESSON
CORPORATION, a Delaware corporation;
WAL-MART STORES, INC., a Delaware
corporation; and DOES 1 through 100,
inclusive,

Defendants.

**ENDORSED
FILED**

**SAN FRANCISCO COUNTY
SUPERIOR COURT**

(SPACE BELOW FOR FILING STAMP ONLY)
2006 NOV 3 AM 10:17

GORDON PARK - LL CLERK

BY: Deborah Steppe
DEPUTY CLERK

CASE NO. CGC-06-457600

**JOINT DECLARATION OF DIANA L.
GAINES AND GARY D. GAINES**

(Complaint filed concurrently herewith)

JOINT DECLARATION

DECLARATION OF DIANA L. GAINES AND GARY D. GAINES

We, DIANA L. GAINES AND GARY D. GAINES, declare and state under penalty of perjury under the laws of the State of California that:

1. We are the biological parents of the decedent, Thomas B. Gaines ("Thomas").
2. Thomas was pronounced dead on November 12, 2004 at UNC Hospitals in Chapel Hill, Orange County, North Carolina.
3. No proceeding is now pending in California for the administration of the decedent's estate.
4. Thomas was not married when he died and did not have any children nor a will. As such, we, as his biological parents, are the heirs and successors in interest to his estate.
5. We are the decedent's successors in interest (as defined in Section 377.11 of the California Code of Civil Procedure) and succeed to the decedent's interest in the action or proceeding.
6. No other person has a superior right to commence the action or proceeding or to be substituted for the decedent in the pending action or proceeding.
7. Attached as to this declaration is a true and correct copy of Thomas' Death Certificate.

///

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///

///

1 We declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3
4 Executed this 1st day of November, 2006, at Vale, North Carolina.

5
6
7 Diana L. Gaines
8 Diana L. Gaines
9 Declarant

10 Gary D. Gaines
11 Gary D. Gaines
12 Declarant

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JOINT DECLARATION